

REMARKS/ARGUMENTS

Claims 1-22 are active.

Claims 12-20 stand withdrawn but are retained for the purpose of the Office to consider rejoinder of the non-elected subject matter.

For the reasons explained below, Applicants believe the elected species is allowable and the generic claim as provided here relating to compounds of formula (I) are allowable. Therefore, claims that are otherwise within Group I but may not be within the scope of the elected specie are not indicated as being withdrawn.

Applicants appreciate the Examiner's withdrawal of the previous rejection.

In the present Action, a new rejection applied under 35 USC 102(e) citing US 2006/0293338 has been asserted.

The rejection cites a compound found in a CAS database search, which is found in Example 107 ([00372]) in the publication.

The present 371 application was filed on April 28, 2006 of a PCT application filed on July 27, 2004 and claims the benefit of EP 03102313.8 filed July 27, 2003, which fully supports the claimed invention.

The '338 publication is available as prior art against this application based on the U.S. provisional application to which it claims priority (35 U.S.C. § 102(e)) because the PCT filing date of November 18, 2003 was after the EP filing date. The provisional application of the '338 publication was filed on November 22, 2002, which is prior to the earliest date to which the present application claims priority (July 28, 2003). However, for the rejection to be valid, the provisional application must support the subject matter upon which the Examiner relied in the rejection.

Applicants have considered the provisional application filing, which presumably the Office can also do as Applicants copy was obtained from the PTO. Example 107 that is the

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compound identified in the CAS search and upon which the rejection relied (nor another similar compound) was NOT present in that provisional. Therefore, the earliest effective prior art date of the '338 publication for the subject matter relied upon in the rejection is the date the PCT was filed (November 18, 2003). While this date is before the filing date of Applicants PCT application, it is after the date of the European Patent application, July 27, 2003.

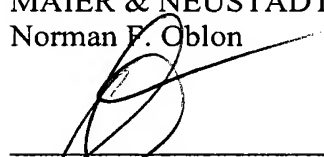
As Applicants European priority application provides support for the claims in the present U.S. application, the '338 application is not believed to be applicable prior art under 35 USC 102(e).

Withdrawal of the rejection is requested

A Notice of Allowance is also requested.

Respectfully submitted,

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